



COPY OF PAPERS
ORIGINALLY FILED

8

PTO/SB/64 (10-00)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
PUL.504

First named inventor: **Cesar Z. Lina**

Application No.: **09/432,904**

Group Art Unit: **3736**

Filed: **November 2, 1999**

Examiner: **DeMille, Danton**

Title:
Foot Mounted Venous Compression Device

Attention: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$_____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity - fee \$ **\$1,280** (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of **Response & Amendment** (identify type of reply):

- ☐ has been filed previously on _____
☒ is enclosed herewith.

B. The issue fee of \$ _____.

- ☐ has been paid previously on _____
☐ is enclosed herewith.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

06/28/2002 HLE555 00000010 500326 09432904

01 FC:141

1280.00 CH

RECEIVED

MAY 29 2002

OFFICE OF PETITIONS

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c)(III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

5/10/2002
Date

Eric W. Cernyar
Signature

Telephone
Number: (210) 863-0063

Eric W. Cernyar

Typed or printed name

Kinetic Concepts, Inc., P.O. Box 659508

Address

San Antonio, TX 78265-9508

Enclosures: ☒ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☒ Other: Revocation & New Power of Atty, Change Corr. Address:

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

5/10/2002
Date

Eric W. Cernyar
Signature

Eric W. Cernyar

Type or printed name of person signing certificate



COPY OF PAPERS
ORIGINALLY FILED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Lina

Serial No.: 09/432,904

Filed: Nov. 2, 1999

For: Foot Mounted Venous Compression
Device

§ Examiner: DeMille, D.
§
§ Group Art Unit: 3764
§
§ Attorney Docket No.: PUL.504
§
§
§
§
§

Box DAC
Commissioner for Patents
Washington, D.C. 20231

STATEMENT REGARDING UNINTENTIONAL DELAY

The undersigned believes that the most succinct way to explain why the Applicants' delay in filing the petition to revive was unintentional is to summarize the chronology of events in the table below.

Nov. 2, 1999	Outside counsel Mr. Wayne Colton, Reg. No. 40,962, files application, declaration and power of attorney on behalf of client.
June 20, 2000	PTO mails office action to Mr. Colton. Client does not receive copy of office action.
April 3, 2001	PTO mails notice of abandonment. Client does not receive copy of the office action.
on or about January 2, 2002	Client calls PTO seeking status information on patent application and discovers, to its dismay, that the application has gone abandoned.
February 19, 2002	Client faxes power to inspect and copy to agent in order to obtain copy of file wrapper to enable it to prepare petition to revive.
March 21, 2002	PTO receives power to inspect.
March 26, 2002	Client receives copy of file wrapper.
April 3, 2002	The undersigned begins reviewing file wrapper to prepare response to outstanding office action, and recognizes that the file wrappers of the parent applications are needed to prepare response.
April 3, 2002	The undersigned phones in request to OptiPat for file wrappers of parent applications.
April-early May, 2002	OptiPat informs client of problems obtaining the files from the USPTO.
May 2, 2002	Client finally secures copy of parent file wrappers.

May 3-8, 2002	Client review file wrappers and prepares response to office action and petition to revive.
May 9-10, 2002	Client gets necessary signatures and files response and petition.

The Undersigned respectfully requests that the petition be granted and that the client, KCI Licensing, Inc., the assignee of the application, not be prejudiced for relying on Mr. Wayne Colton, whom the United States Patent and Trademark Office has registered to practice before it on the basis of its satisfaction that he is "competent to advise and assist applicants for patents in the presentation and prosecution of their applications before the Office." 37 C.F.R. § 10.7(a)(2)(iii); *see also In re Lonardo*, 17 U.S.P.Q.2d 1455, 1458 (Comm'r for Patents 1990) ("When a client does not knowingly and freely acquiesce in his attorney's neglectful conduct, but instead is misled into believing that the attorney is industrious, dismissal is not only a harsh step but one for which the circumstances provide little support for an agency theory as a rationale.").

Respectfully submitted,



Eric W. Cernyar
Reg. No. 45,919
Kinetic Concepts, Inc.
P.O. Box 659508
San Antonio, TX 78265-9508
(210) 863-0063
(210) 255-4440 (fax)